

ORDER NO. 1864

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Korea Post–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-9

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH KOREA POST)

(Issued October 30, 2013)

I. INTRODUCTION

On September 10, 2013, the Postal Service filed Notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement with Korea Post (Agreement). The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with

Foreign Postal Operators 1 (Foreign Postal Operators 1) product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission approved the addition of the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, and concurrently included two agreements within that product.² The Commission has since approved the inclusion of additional agreements on grounds of functional equivalence.³

Instant filing. The Postal Service's filing includes a Notice, supporting documentation, and an Application for Non-Public Treatment of material filed under seal. The Notice includes requests for approval of an exception to the data collection requirements in rule 3010.43 and to the service performance reporting requirements in rule 3055.3(a)(3). *Id.* at 7-8.

Scope of Agreement; effective date and duration. The Agreement establishes a service for delivery confirmation scanning with Letter Post small packets, as established in certain previous agreements (identified in the Notice) that have been approved for inclusion within the Foreign Postal Operators 1 product. *Id.* at 4. Rates pursuant to the Agreement are intended to take effect December 1, 2013. Errata, Attachment A. The Agreement is to remain in effect for one calendar year after its effective date, unless terminated earlier. Notice, Attachment 2 at 6 (Article 22).

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Bilateral Agreement with Korea Post, September 10, 2013 (Notice). See also United States Postal Service Response to Order No. 1833 and Notice of Filing Errata, September 13, 2013 (Errata).

² Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549). The two included agreements are the Strategic Bilateral Agreement between the United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (in Docket No. R2010-5) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (in Docket No. R2010-6).

³ See Notice at 2-3, footnotes 3 through 5 for a list of agreements.

Initial Commission action. In Order No. 1833, the Commission provided public notice of the Postal Service's filing; established a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative, and solicited comments from interested persons.⁴

III. THE POSTAL SERVICE'S POSITION

Statutory criteria. The Postal Service states that it provides information responsive to the Commission rule implementing 39 U.S.C. § 3622(c)(10)(A)(i), which requires that the Agreement improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to institutional costs, in the financial workpapers filed under seal with its Notice.⁵ Notice at 5. The Postal Service states, with respect to the Commission rule implementing 39 U.S.C. § 3622(c)(10)(A)(ii), which requires that the Agreement enhance the performance of mail preparation, processing, transportation, or other functions, that the Agreement includes the following operational improvements: (1) a delivery confirmation service for Letter Post small packets, which is designed to track and report specified scanning events for customers in the country of origin and recipients in the United States; (2) labeling and barcoding (in Annex 2); and (3) suggested sortations for routing to the Postal Service's International Service Centers based on destination ZIP Codes.⁶ *Id.*

The Postal Service also contends that the Agreement will not cause unreasonable harm to the marketplace. See 39 U.S.C. § 3622(c)(10)(B). It states that Korea Post can avail itself of this type of agreement. Further, the Postal Service states that, due to U.S. Private Express Statutes, which generally prohibit entities other than

⁴ Notice and Order Concerning Korea Post Negotiated Service Agreement, September 12, 2013 (Order No 1833).

⁵ See 39 C.F.R. § 3010.42(c)(1) through (4).

⁶ See 39 C.F.R. § 3010.42(d).

the Postal Service from carrying inbound international letters commercially after entry at a U.S. port, it is unaware of any private entity that would be able to serve the United States market for inbound Letter Post from Korea on the terms and scale contemplated in the Agreement.⁷ *Id.* at 6.

The Postal Service also addresses the requirement that agreements, such as the instant Agreement, be made available on reasonable terms to similarly situated mailers. See 39 U.S.C. § 3622(c)(10). It notes that Korea Post is the designated postal operator for the Republic of Korea, and that no other entity is similarly situated to Korea Post in its ability to tender the broad-based Letter Post flows from the Republic of Korea under similar operational conditions. *Id.* at 8. It therefore “finds it difficult to conceive of a ‘similarly situated mailer’ to which it could make a similar agreement available for each country-specific flow; accordingly, the Postal Service views this criterion as inapplicable in this instance.” *Id.*

Functional equivalence. The Postal Service identifies other agreements the Commission has included within the Foreign Postal Operators 1 product, and states the Agreement is functionally equivalent to them. *Id.* at 9. It states that all of the agreements are constructed from a similar template and contain many similar terms and conditions, including establishing a service for delivery confirmation scanning with Letter Post small packets; are with a foreign postal operator; and have similar cost characteristics, as they relate to services for delivery confirmation scanning with Letter Post small packets. *Id.* at 9-10.

The Postal Service adopts the Singapore Post 2011 Agreement (from among previous approved agreements) as the primary basis for comparison for reasons of simplicity and because it believes the comparison it provides is illuminating and appropriate. *Id.* at 10-11, n.14. It identifies two material differences between the two agreements. Article 8, Paragraph 1 provides that the Agreement may be terminated for good cause if a party fails to make timely and full payment of any undisputed invoice or

⁷ See 39 C.F.R. § 3010.42(e).

portion thereof. *Id.* at 11. Annex 2 to the Agreement contains a section related to interest on past due undisputed invoices and portions thereof for inbound mailstreams. *Id.* The Postal Service states that these differences do not detract from the conclusion that the Korea Post Agreement is functionally equivalent to the Singapore Post 2011 Agreement and other agreements in the Foreign Postal Operators 1 product. *Id.*

Reporting exceptions. Under 39 C.F.R. § 3010.43, the Postal Service is to provide a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. § 3622(c)(10). The Postal Service proposes that no special data collection plan be created because it intends to report information on the Agreement through the Annual Compliance Report (ACR) process, and to continue to cooperate with the Commission to provide any necessary information about mail flows from the Republic of Korea within the course of the annual compliance review process. *Id.* at 7.

In addition, the Postal Service asks that the Commission approve an exception to the performance reporting requirements under 39 C.F.R. § 3055.3(a)(3) for all Foreign Postal Operators 1 agreements added to the Mail Classification Schedule (MCS). The rationale is that the performance of products within Foreign Postal Operators 1 product is already included in the measurement of other products. *Id.* at 12.

IV. COMMENTS

The Public Representative filed comments on September 25, 2013.⁸ No other comments were received. The Public Representative's review of the Agreement and the financial workpapers leads him to conclude that the Agreement is consistent with the criteria in 39 U.S.C. § 3622(c)(10) and is functionally equivalent to the Singapore Post 2011 Agreement, which the Postal Service has identified as a baseline for

⁸ Public Representative Comments on Postal Service Notice Concerning Rate Adjustment and Bilateral Agreement with Korea Post, September 25, 2013 (PR Comments).

purposes of addressing the functional equivalency of the instant Agreement. PR Comments at 1-2. However, the Public Representative recommends that the Commission clarify the baseline agreement for this product or provide guidance to the Postal Service for identifying the baseline agreement for purposes of functional equivalency comparisons in future dockets. *Id.* at 2. He observes that neither the Commission nor the Postal Service has identified an agreement to serve as a baseline agreement, and states that the Postal Service has not explained its decision to use the Singapore Post 2011 Agreement in this instance. *Id.* at 5-6.

The Public Representative concludes that the Agreement's negotiated rates for inbound letter-post small packets represent an improvement over the default terminal dues rates established by the Universal Postal Union (UPU), thus satisfying 39 U.S.C. § 3622(c)(10)(A)(i). *Id.* at 4. He concludes that based upon the negotiated rates, the financial model indicates that the Korea Post Agreement will generate unit revenue on projected volumes in excess of estimated unit attributable costs, resulting in a positive cost coverage during the term of the agreement. *Id.* He also concludes, with respect to 39 U.S.C. § 3622(c)(10)(A)(i), that the Korea Post Agreement should improve the operational performance of the Postal Service. *Id.* He further states that the Postal Service makes reasonable arguments why other statutory criteria are not implicated by the inbound Korea Post Agreement. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Postal Service's filing and comments filed by the Public Representative.

Statutory responsibilities. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. §§ 3010.40(a) and (b), the Agreement must either improve the net financial position of the Postal Service or enhance the performance of various operational functions and must not cause unreasonable harm to

the marketplace. The Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 C.F.R. § 3010.40(c).

The Commission finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(i), that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. It also finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(ii), that the Agreement includes provisions intended to enhance performance. With respect to 39 U.S.C. § 3622(c)(10)(B), the Commission finds that the Agreement will not cause unreasonable harm to the marketplace, given the contracting parties' unique status as designated postal operators and the prohibition against entities other than the Postal Service from carrying inbound international letters commercially (at least those below certain price and weight thresholds) after entry at a U.S. port.

Functional equivalence. The Agreement is the most recent in a series of agreements the Postal Service has proposed for inclusion within Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010-35). The Postal Service adopts the Singapore Post 2011 Agreement (approved in Docket No. R2012-1) as a "baseline" in this proceeding. It discusses similarities and differences between that agreement and the instant Agreement, while maintaining that the Agreement is also functionally equivalent to other included agreements.

The Commission finds that the differences the Postal Service identifies between the Singapore Post 2011 Agreement and the instant Agreement do not foreclose a finding of functional equivalence. The Commission therefore concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

The Public Representative's concerns about the need for a "baseline" agreement have some merit. At the same time, however, the product is limited to foreign postal operators. Nevertheless, the number of agreements included in this product has grown substantially since it was introduced in 2010 (when two agreements were concurrently

included in the product). Moreover, as the Notice indicates the original two agreements have been superseded. Notice at 1-2. This means the identification of a baseline agreement for this product is not as straightforward as it may be for more narrowly-defined products with fewer agreements.

In the MCS, the Foreign Postal Operator 1 product is premised on the initial agreements filed in Docket Nos. MC2010-35, R2010-5, and R2010-6. Since those have been superseded, in its next filing concerning this (or successor) product, the Postal Service is to address the continued appropriateness of the reference in the MCS to the original agreements as baseline agreements and propose alternatives (if warranted). If an alternative is proposed, the Postal Service should file a request to establish a new product, e.g., Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 2, pursuant to 39 C.F.R. part 3020, subpart B. This result would be administratively preferable to continued reliance on the current product for future agreements.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of rule 3010.43's data collection reporting requirements. Notice at 7. Instead, it intends to report information under the Agreement through the ACR and agrees to provide information about mail flows from the Republic of Korea within the course of the Annual Compliance Review process. *Id.* The Commission grants an exception from rule 3010.43.

The Postal Service also requests that it be excepted from the reporting requirements of 39 C.F.R. § 3055 (a)(3). *Id.* In Order No. 996, the Commission granted the Postal Service's request for a standing exemption from performance reporting requirements for future agreements that fall within the parameters of the Inbound

Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.⁹ That exception to the reporting requirements continues to apply.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the inclusion of the Korea Post Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product, and revises the Mail Classification Schedule as shown in the text appearing below the Secretary's signature.
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's September 10, 2013 Notice filed in this proceeding.
3. The Postal Service shall notify the Commission if the effective date of the Korea Post Agreement differs from the date identified in the Notice, as corrected by the Errata.

⁹ Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators¹ Negotiated Service Agreement at 7, November 23, 2011 (Order No. 996).

4. The Postal Service shall notify the Commission if the Korea Post Agreement terminates early.
5. Within 30 days of expiration, or upon early termination of the Korea Post Agreement, the Postal Service shall file related cost, volume, and revenue data.
6. The Postal Service's request that the Korea Post Agreement be excepted from 39 C.F.R. § 3010.43, concerning a separate data collection plan, is granted.
7. The Postal Service is to address the baseline agreement and product designation in its next filing concerning this (or successor) product as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6
PRC Order No. 549, September 30, 2010

Included Agreements

China Post Agreement, R2013-2, expires December 31, 2013

HongKong Post–United States Postal Service Letter Post
Bilateral Agreement, R2013-3, expires December 31, 2013

Singapore Post Limited–United States Postal Service
Bilateral Agreement, R2013-8, expires March 31, 2014

Australia Post Agreement, R2012-2, expires December 31, 2013

Canada Post 2012 Agreement, R2012-5, expires December 31, 2013

Royal PostNL BV Agreement, R2013-4, expires December 31, 2014

Korea Post Agreement, R2013-9, expires November 30, 2014.
